



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

**DECISION**  
Case #: MQB - 174225

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**PRELIMINARY RECITALS**

On May 9, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA). The hearing was held on June 8, 2016, by telephone.

The issue for determination is whether the agency erred in its termination of QMB benefits for the months of January and February 2016.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On November 2, 2015, petitioner completed a renewal to maintain continued medical assistance benefits.
3. On November 3, 2015, the agency sent a request for verification to petitioner seeking documentation relating to a checking account petitioner had reported to the agency. The documentation was due in the agency on November 12, 2015.
4. The agency did not receive the verification. On November 17, 2015, the agency sent petitioner a notice informing her that her QMB premium assistance would be ending due to the agency not receiving the required verification documents.
5. Petitioner was not enrolled in QMB in December 2015, January 2016, and February 2016.
6. Petitioner did not respond to the termination notice and did not request a hearing.
7. Petitioner filed a new application for medical assistance on 2/22/16. Petitioner now has QMB in place as of 3/1/16.
8. Petitioner filed a request for hearing on May 9, 2016 seeking reimbursement for premiums that were not covered by QMB premium assistance in January and February of 2016.

### **DISCUSSION**

An administrative law judge (ALJ) or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice. In this case, the negative action was the December 1, 2015 termination of QMB that was noticed in the 11/17/15 notice.

The Deadline for filing an appeal was January 18, 2016 as stated on the notice sent on November 17, 2015 to petitioner. Petitioner stated that she did not receive the request for verification and did not know that anything was asked of her. She also stated that she did not receive the termination notice and was unaware of the negative action or her appeal deadline.

The notices were sent to the accurate address and the record does not reflect that it was returned as undelivered. Where the evidence presented demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. *See, Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence*)2d. ed.) § 2153; 1 Wigmore, *Evidence* (2<sup>nd</sup> ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

\*\*\* (Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v.

Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2<sup>nd</sup> 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See State ex. Rel. Flores v. State, 183 Wis.2d 587, at 612-3 ((1994).

Petitioner offered nothing of substance to rebut this presumption other than to state that it was not received. That is insufficient. The appeal was untimely.

### **CONCLUSIONS OF LAW**

The appeal is untimely.

**THEREFORE, it is**

**ORDERED**

The appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of July, 2016

\s \_\_\_\_\_  
John P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 25, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability